**EXPLANATORY MEMORANDUM TO**

**THE NORTHERN IRELAND ASSEMBLY (ELECTIONS) (AMENDMENT) ORDER 2009**

**2009 No. [N.I. ]**

**1.** This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

## 2. Purpose of the instrument

2.1 This Order makes technical amendments to the Northern Ireland Assembly (Elections) Order 2001 ("the 2001 Order") which are required as a result of recent changes made to the legislation governing Parliamentary elections. The Order also implements certain proposals contained in the Government consultation paper: *Improving Administration of Elections to the Northern Ireland Assembly* (pub. July 2008).

## 3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

## 4. Legislative Context

4.1 The 2001 Order makes provision for the conduct of elections to the Northern Ireland Assembly. That Order applies, with modifications, provisions of the Representation of the People Act 1983 ("the 1983 Act"), the Representation of the People Act 1985, and the Representation of the People (Northern Ireland) Regulations 2001 ("the 2001 Regulations") all of which make provision for the conduct of UK Parliamentary elections in Northern Ireland.

4.2 The 1983 Act was amended by various provisions of the Electoral Administration Act 2006 ("the 2006 Act"). In order to implement these amendments fully, in July 2008 the 2001 Regulations were replaced by the Representation of the People (Northern Ireland) Regulations 2008 ("the 2008 Regulations").

4.3 This Order makes amendments to the 2001 Order to reflect the changes made to the 1983 Act and the introduction of the 2008 Regulations.

## 5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland only.

## 6. European Convention on Human Rights

6.1 The Minister of State for Northern Ireland, Paul Goggins, has made the following statement regarding Human Rights:

In my view the provisions of the Northern Ireland Assembly (Elections) (Amendment) Order 2009 are compatible with the Convention rights.

## 7. Policy background

7.1 The purpose of this Order is to update the framework for administering elections to the Northern Ireland Assembly to take account of recent changes to the legislation governing Parliamentary elections. A draft of the Order, which contained these changes, was published in July 2008 alongside the Government consultation paper: *Improving Administration of Elections to the Northern Ireland Assembly* ("*the Consultation Paper*"). The original draft of the Order has since been updated to include the policy changes that are outlined below.

*Recent changes to legislation governing Westminster elections*

7.2 In July 2008 the law relating to the conduct of Parliamentary elections in Northern Ireland was updated to reflect UK wide reforms arising from the 2006 Act. This involved the commencement of numerous provisions of the 2006 Act and also bringing into force the 2008 Regulations. The 2001 Order therefore requires updating to reflect these changes for the purposes of Northern Ireland Assembly elections and to ensure consistency with the legal framework for Parliamentary elections.

*Filling of MLAs Vacancies*

7.3 *The Consultation Paper* contained proposals to amend the system for filling vacancies in the Assembly. Currently, candidates submit a list of up to six substitutes ranked in order of preference when delivering their nomination papers. However, concerns have been raised in relation to this system; in particular, substitutes being unwilling or unable to fill a seat should a vacancy arise. The Order therefore makes provision for the nominating officer of the party that the vacating member belonged to at the time of his or her election to nominate a replacement for the vacant seat at the time the vacancy arises. Independent MLAs may still, if they are elected, submit lists of substitutes who may be approached to fill their seat should it become vacant.

*Minor amendments*

7.4 The Order makes various other minor amendments relating to procedures at Assembly elections. These include: bringing the procedure for suspending the count at Assembly elections in line with that for local elections in Northern Ireland; extending the timeframes for the nomination of candidates; and streamlining the process for providing party emblems to the returning officer.

## 8. Consultation outcome

8.1 The Northern Ireland Office is required under the Political Parties, Elections and Referendums Act 2000, to consult with the Electoral Commission before making an Order relating to elections to the Northern Ireland Assembly.

8.2 The Northern Ireland Office's consultation paper: *Improving the Administration of Elections to the Northern Ireland Assembly* was published in July 2008. It included a copy of the draft Order that the Northern Ireland Office proposed making and also sought views on a number of other matters that might be included. The consultation period ended on 8 October 2008. Eight written responses were

received, the majority of which were from political parties and other interested politicians. The Electoral Commission and the Chief Electoral Officer for Northern Ireland also responded. Most respondents agreed that the current system for filling MLA vacancies requires reform and supported the changes proposed in the consultation paper. An alternative proposal put forward by the Electoral Commission, which involved a variation of the current substitutes system, was carefully considered by Government. However, the Government concluded that the Commission's proposal provided in essence a very similar outcome to that set out in the consultation paper. In light of this, and given the support from most other respondents for the Government's proposals, the Government concluded that the Order should make provision for the original proposals contained in the consultation paper. The other minor amendments relating to procedures at Assembly elections that have been included in the Order received widespread support from respondents.

8.3 The Consultation Paper and Government Response are available at http://www.nio.gov.uk/index/public-consultation.htm.

## 9. Guidance

9.1 This Order is not accompanied by any guidance.

## 10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

10.2 This legislation will benefit those public sector bodies which administer elections in Northern Ireland by providing up to date legislative guidance on the administration of Assembly elections in Northern Ireland that is as consistent as far as possible with that which applies to other elections.

## 11. Regulating small business

11.1 The legislation does not apply to small business.

## 12. Monitoring & review

12.1 The intended outcome of this Order is to improve the administration of elections to the Northern Ireland Assembly. The Northern Ireland Office will review the effectiveness of the legislation after the next Assembly election.

## 13. Contact

**Lee Hegarty,** Head of Elections Unit at the Northern Ireland Office Tel:020 7210 6569 or email: lee.hegarty@nio.x.gsi.gov.uk can answer any queries regarding the instrument.

**Northern Ireland Office**
*November 2008*